IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

NO. 131

J. W. WHITEHOUSE, *et al.*,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, *et al.*,

Respondents.

On Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

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PETITION FOR MODIFICATION

KENNETH F. BURGESS,

WALTER J. CUMMINGS, JR.,

Attorneys for Respondent Carrier Members, National Railroad Adjustment Board, Third Division.

SIDLEY, AUSTIN, BURGESS & SMITH,

Of Counsel.

TWENTIETH CENTURY PRESS, INC., CHICAGO 6

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The decision herein was that resort to the courts by the Railroad was premature. This Court therefore held that judicial relief was unwarranted at this time. The opinion specifically stated that the other issues in the case were not being decided. The Court expressly refrained from ac-

judicating the merits. It declined to resolve the "perplexing questions" presented, even though all the parties had asked the Court to do so.

But in the course of the opinion a few remarks were made which, it may be contended, relate to the merits. There are other cases even now before the courts and Board which might be affected by those remarks.

Because some of the language of the opinion might be misunderstood as a ruling beyond the actual decision, respondents respectfully ask for a modification of the opinion in these respects:

1. Excise the sentence "Analogy to the law of parties as developed for judicial proceedings is not compelling and in any event does not approach constitutional magnitude" from page 5, lines 3-6, of the slip opinion, to avoid the merits and conform to the well settled principle not to anticipate questions of constitutional law.

2. Excise "only necessary" from page 7, line 13 of the slip opinion.

3. Add the phrase, or its equivalent, "although the Court does not presently consider whether they would be bound by the ensuing award" after the word "proceeding" at page 6, line 24 of the slip opinion.

In view of the Court's statement that "Their difficulty [the questions on the merits] admonishes us to observe the wise limitations on our function and to confine ourselves to deciding only what is necessary to the disposition of the immediate case," the opinion surely did not mean to prejudge the merits. However, unless this petition is granted,

the opinion may have that unintended effect on the lower courts and the Board.

Respectfully submitted,

KENNETH F. BURGESS,

WALTER J. CUMMINGS, JR.,

Attorneys for Respondent Carrier Members, National Railroad Adjustment Board, Third Division.

SIDLEY, AUSTIN, BURGESS & SMITH,

Of Counsel.

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